

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9611 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

SUGRABAI W/O. JAINUDIN ISUFALIDIED DURING THE PENDENCY OF

Versus

IBRAHIM ALIHUSEIN ZABNAWALA

Appearance:

MR RN SHAH for Petitioners

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 01/05/98

ORAL JUDGEMENT

This is a peculiar and unfortunate case of the plaint being returned successively by the Senior Division Court to the Junior Division Court and the Junior Division Court to the Senior Division Court and again to the Junior Division Court.

2. Special Civil Suit No.110 of 1991 was filed in the Court of Civil Judge, (S.D.), Godhra, on 19th September 1991 wherein the claim for jurisdiction was mentioned at Rs.29,500/-. On 23rd September 1991, the Senior Division Court passed the following order below the plaint:

"Read application. Looking to the pleading of the plaintiff, suit is returned for presentation to the proper Court in Dahod Civil Court (J.D.) under Order 7 Rule 10".

The plaint was actually returned on 3rd October 1991 and presented to the Junior Division Court on 4th October 1991 and was registered as Regular Civil Suit No.221 of 1991. On 7th October 1991 the Clerk of the Court made a note that as the suit was valued at more than Rs.20,000/the suit was to be placed for hearing before the Court. On 9th October 1992 the Junior Division Court returned the plaint to the plaintiff on the ground that the value of the subject matter of the immovable property was Rs.29,500/- exceeding the limit of pecuniary and jurisdiction of the Junior Division Court.

3. Against the order of the Junior Division Court, Misc. Civil Appeal No.152 of 1991 was preferred to the District Court on 28.10.1991, however, that came to be dismissed by the District Court on 24th December 1991, confirming the order of the Junior Division Court returning the plaint for presentation to the Senior Division Court.

4. Again the plaint was presented to the Senior Division Court on 4th January 1992. It was not registered and ultimately on 11th November 1992, the Senior Division Court again returned the plaint to the plaintiff for presentation to the Junior Division Court on the ground of res-judicata because, the earlier order of the Senior Division Court returning the plaint for presentation for proper Court was not challenged and set aside.

5. This has created a very peculiar situation. The Junior Division Court's order confirmed by the District Court on the ground that the Junior Division Court has no jurisdiction to hear because the suit is valued at more than Rs.20,000/-. The Senior Division Court had earlier returned the plaint and, therefore, that was not challenged.

All these orders are under challenge in this

petition.

6. However, it must be stated that the Senior Division Court when it returned the plaint, did not give any reasons. It also did not take note of the fact that the Junior Division Court order returning the plaint was also confirmed by the District Court.

7. It is clear that when the Special Civil Suit No.110 of 1991 was presented to the Senior Division Court, Godhra, on 19th September 1991, that the suit was valued at more than Rs.20,000/- and, therefore, the Civil Judge (J.D.) had no jurisdiction to try the suit and the Senior Division Court had the jurisdiction. Consequently, the subsequent presentation and the orders of returning the plaint also will not survive.

8. In the result, the impugned order dated 29th September 1991 passed by the Civil Judge (S.D.) returning the plaint of Special Civil Suit No.110 of 1991 is quashed and set aside and the plaint and the suit are directed to be restored to the file of the Civil Judge (S.D.), Godhra for disposal in accordance with law. The subsequent orders of Junior Division Court returning the plaint to the Senior Division Court and the District Court confirming the same order are correct in law, however, they would not survive in view of the fact that the original filing of the suit in the Senior Division Court is upheld. The last order dated 11th November 1992 of Senior Division Court is also set aside which again returned the plaint for presentation to the Junior Division Court on the ground that the earlier order dated 23rd September 1991 had become res-judicata.

9. In the result, the petition is allowed. Rule is made absolute accordingly. Though the respondent is served and no one appeared, the respondent shall pay to the petitioner cost of these proceedings quantified at Rs.1,000/- (Rupees One thousand only).

sreeram.